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8
9 **BEFORE THE ARIZONA STATE BOARD OF PHARMACY**

10 In the Matter of,

11 **KORMAN HEALTHCARE**
12 **PHARMACY (formerly PHOENIX**
LONG TERM CARE PHARMACY),

13 Holder of Permit No. Y003805
14 In the State of Arizona

Board Case No. 09-0039A-PHR

**CONSENT AGREEMENT
FOR CIVIL PENALTY**

15
16 **RECITALS**

17 In the interest of a prompt and judicious settlement of this case, consistent with the
18 public interest, statutory requirements and the responsibilities of the Arizona State Board
19 of Pharmacy ("Board") under A.R.S. § 32-1901, *et. seq.*, Korman Healthcare Pharmacy,
20 holder of Permit Number Y003805 in the State of Arizona ("Respondent"), and the Board
21 enter into the following Recitals, Findings of Fact, Conclusions of Law and Order
22 ("Consent Agreement") as a final disposition of this matter.

23 1. Respondent has read and understands this Consent Agreement and has had
24 the opportunity to discuss this Consent Agreement with an attorney, or has waived the
25 opportunity to discuss this Consent Agreement with an attorney.
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1 2. Respondent understands that it has a right to a public administrative hearing
2 concerning the above-captioned matter, at which hearing it could present evidence and
3 cross examine witnesses. By entering into this Consent Agreement, Respondent
4 knowingly and voluntarily relinquishes all right to such an administrative hearing, as well
5 as rights of rehearing, review, reconsideration, appeal, judicial review or any other
6 administrative and/or judicial action, concerning the matters set forth herein.

7 3. Respondent affirmatively agrees that this Consent Agreement shall be
8 irrevocable.

9 4. Respondent understands that this Consent Agreement or any part of the
10 agreement may be considered in any future disciplinary action by the Board against it.

11 5. Respondent understands this Consent Agreement deals with Board
12 Complaint No. 3631 involving allegations of unethical conduct against Respondent. The
13 investigation into these allegations against Respondent shall be concluded upon the
14 Board's adoption of this Consent Agreement.

15 6. Respondent understands that this Consent Agreement does not constitute a
16 dismissal or resolution of any other matters currently pending before the Board, if any,
17 and does not constitute any waiver, express or implied, of the Board's statutory authority
18 or jurisdiction regarding any other pending or future investigation, action or proceeding.

19 7. Respondent also understands that acceptance of this Consent Agreement
20 does not preclude any other agency, subdivision, or officer of this State from instituting
21 any other civil or criminal proceedings with respect to the conduct that is the subject of
22 this Consent Agreement.

23 8. Respondent acknowledges and agrees that, upon signing this Consent
24 Agreement and returning this document to the Board's Executive Director, it may not
25 revoke its acceptance of the Consent Agreement or make any modifications to the
26

document regardless of whether the Consent Agreement has been signed by the Executive Director. Any modification to this original document is ineffective and void unless mutually agreed by the parties in writing.

9. Respondent understands that the Consent Agreement shall not become effective unless and until adopted by the Board and signed by its Executive Director.

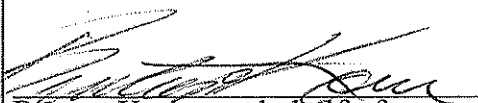
10. If a court of competent jurisdiction rules that any part of this Consent Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full force and effect.

11. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, it will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

12. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

13. Respondent understands that any violation of this Consent Agreement constitutes unethical conduct and may result in disciplinary action. A.R.S. §§ 32-1901.01(A)(19), -1927.02(A)(1).

ACCEPTED AND AGREED BY RESPONDENT

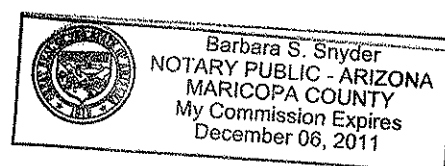

Burton Korner, on behalf of
Korman, LLC

Dated: 10/12/09

Subscribed and sworn to before me in the County of Maricopa, State of Arizona,
this 12th day of October, 2009, by Burton Korner, on behalf of Korman, LLC.


NOTARY PUBLIC

My Commission expires: December 06, 2011



1 **FINDINGS OF FACT**

2 1. The Board is the duly constituted authority for licensing and regulating the
3 practice of pharmacy in the State of Arizona.

4 2. Respondent is the holder of permit number Y003805 allowing it to operate
5 a pharmacy in Arizona.

6 3. Respondent is owned by Korman, LLC.

7 4. On March 25, 2008, Steve Hardman on behalf of Respondent signed a
8 Consent Agreement for Civil Penalty in Board Case No. 08-0019-PHR (the "2008
9 Consent Agreement"). The 2008 Consent Agreement became effective on March 27,
10 2008.

11 5. The 2008 Consent Agreement required that Respondent pay a \$52,000 civil
12 penalty. Respondent's first payment of \$13,000 was due by June 25, 2008.
13 Respondent's second payment of \$13,000 was due by September 30, 2008. Respondent's
14 third payment of \$13,000 was due by December 31, 2008. Respondent's fourth payment
15 was due March 31, 2009. Respondent failed to make any of the payments required by the
16 Consent Agreement.

17 **CONCLUSIONS OF LAW**

18 1. The Board possesses jurisdiction over the subject matter and over
19 Respondent pursuant to A.R.S. § 32-1901 *et seq.*

20 2. The Board may discipline a permittee who has engaged in unethical
21 conduct. A.R.S. § 32-1927.02(A)(1).

22 3. The conduct and circumstances described above constitutes unethical
23 conduct pursuant to A.R.S. § 32-1901.01(A)(19) (Violating a formal order, terms of
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1 probation, a consent agreement or a stipulation issued or entered into by the Board or its
2 executive director).

3 **ORDER**

4 Based upon the above Findings of Fact and Conclusions of Law, the Board issues
5 the following Order:

6 A. Respondent shall pay a civil penalty of **\$44,800¹** as follows:

7 1. Thirty-six (36) monthly payments of \$1,000; and

8 2. A final payment of \$8,800;

9 with the first payment being due on December 1, 2009, and each subsequent payment due
10 on the first day of each month thereafter until paid in full. If the payment due date falls
11 on a Saturday, Sunday, or holiday, the payment is due on the next business day. Each
12 payment must be received in the Board's office on or before the due date.

13 B. If Respondent is more than sixty (60) days late in making any payment due
14 under this Consent Agreement, Respondent's permit number Y003805 shall be
15 immediately suspended pending proceedings for revocation or other action by the Board.
16 The Board's Executive Director will notify Respondent of the suspension. Following the
17 suspension, a hearing in the matter will be promptly instituted and determined. The issue
18 at the hearing will be limited solely to whether Respondent has violated this Consent
19 Agreement.

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¹ The amount of the civil penalty due under the 2008 Consent Agreement was \$52,000.
Respondent has already made payments of \$5,200 in September 2009 and two payments
of \$1,000 each in October and November of 2009.

1 DATED this 19th day of November, 2009.

2 ARIZONA STATE BOARD OF PHARMACY

3 (Seal)

4
5 By:



6 HAL WAND, R.Ph.
7 Executive Director

8 ORIGINAL OF THE FORGOING FILED
9 this 20 day of November, 2009, with:

10 Arizona State Board of Pharmacy
11 1700 West Washington, Suite 250
12 Phoenix, Arizona 85007

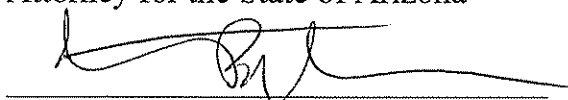
13 EXECUTED COPY OF THE FOREGOING MAILED
14 BY CERTIFIED MAIL
15 this 20 day of November, 2009, to:

16 Burton Korner
17 Larry Donnelly
18 Korman Healthcare Pharmacy, Permit #Y003805
19 5787 W. Erie Street
20 Chandler, Arizona 85226
21 Respondent

22 EXECUTED COPY OF THE FOREGOING MAILED
23 this 20 day of November, 2009, to:

24 Charles I. Kelhoffer
25 Kelhoffer, Manolio & Firestone, PLC
26 9300 E. Raintree Drive, Suite 120
Scottsdale, Arizona 85260
Attorney for Respondent

27 Elizabeth A. Campbell
28 Assistant Attorney General
29 1275 W. Washington Street, CIV/LES
30 Phoenix, Arizona 85007
31 Attorney for the State of Arizona



32 #555370